

Chapter 9

Alcohol or Other Drug Abuse Rehabilitation Failure

9-1. Scope

This chapter provides the authority and outlines the procedures for discharging soldiers for alcohol or other drug abuse rehabilitation failure.

- a.* The soldier is entitled to request a hearing before an administrative separation board if he/she has 6 or more years of total active and reserve military service per paragraph 2-2c(5).
- b.* A soldier who has less than 6 years of military service is not entitled to a board.
- c.* Discharge is based upon alcohol or other drug abuse such as illegal, wrongful, or improper use of any controlled substance, alcohol, or other drug when—
 - (1) The soldier is enrolled in Alcohol and Drug Abuse Prevention and Control Program (ADAPCP).
 - (2) The commander determines that further rehabilitation efforts are not practical, rendering the soldier a rehabilitation failure. This determination will be made in consultation with the rehabilitation team. (See AR 600-85.)
- d.* When not precluded by the limited use policy, offenses involving alcohol or drugs may properly be the basis for discharge proceedings under chapter 14. However, the limited use policy is applicable. Soldiers processed for separation under other provisions of this regulation who also are, or become, subject to separation under this chapter and whose proceedings on other grounds ultimately result in their retention in the Service, will be considered for separation under this chapter.
- e.* When the commander determines that a soldier who has never been enrolled in ADAPCP lacks the potential for further useful service, the soldier will be screened per AR 600-85. If found non-dependent, the soldier will not be rehabilitated but will be considered for separation under other appropriate provisions of this regulation.
- f.* Separations for alcohol abuse rehabilitation failure will be reported separately from separations for drug abuse rehabilitation failure. If separation is based on both, the primary basis will be used for reporting purposes.

9-2. Basis for separation

- a.* A soldier who is enrolled in the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program in one of the following circumstances:
 - (1) There is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.
 - (2) Long-term rehabilitation is necessary and the soldier is transferred to a civilian medical facility for rehabilitation.
- b.* Nothing in this section prevents separation of a soldier who has been referred to such a program under any other provision of this regulation.
- c.* Initiation of separation proceedings is required for soldiers designated as alcohol/drug rehabilitation failures.

9-3. Procedures

The immediate commander will—

- a.* Take action as specified in the notification procedure. (See chap 2, sec I.)
- b.* Separation action will be initiated only when a soldier is under military control. The exception is a soldier confined by civil authorities whose military record indicates that he/she should be processed for separation under this chapter. (See chap 2, sec III for completing proceedings initiated before a soldier departs absent without leave.)

9-4. Characterization of service or description of separation

The service of soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the soldier is in entry-level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the Government initially introduces into the final discharge process limited use evidence as defined by AR 600-85, paragraph 6-4. (See para 2-6*h* for procedures for reinitiation or rehearing, if appropriate.)

9-5. Separation authority

- a.* The commanders specified in paragraph 1-19 are authorized to take final action on cases processed under this chapter.
- b.* The separation authority will approve separation in cases processed without an administrative board if the documentation in the file indicates that—
 - (1) Required rehabilitative efforts have been made.
 - (2) Further rehabilitative efforts are not practical, rendering the soldier a rehabilitation failure.
 - (3) The soldier's potential for fully effective service is substantially reduced by alcohol/drug abuse.

(4) An administrative board is not required or has been waived.

c. For actions processed under the administrative board procedure, the separation authority will take one of the following actions:

(1) Approve separation when recommended by the board if the criteria in *b*(1) through (3), above, are established, and direct the characterization of the soldier's service per paragraph 9–4. The separation authority may not authorize the issuance of a discharge certificate of less favorable character than that recommended by the board.

(2) Approve retention when recommended by the board.

(3) Disapprove a recommendation of separation by the board and direct retention of the soldier.

d. For discharge suspension, see paragraph 1–18.

9–6. Authority for separation

The authority for separation (see para 1–19) will be included in directives or orders directing soldiers to report to the appropriate separation transfer point (STP) for separation.

9–7. Confidentiality and release of records

Records of separation proceedings and action under this chapter, including separation documents referencing reason and authority for separation, are confidential by operation of Federal law. Records may be disclosed or released only per AR 600–85, chapter 6, sections III and IV.

Chapter 10

Discharge in Lieu of Trial by Court-Martial

10–1. General

a. A soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial, 2002 (MCM 2002), includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

(1) The provisions of RCM 1003(d), MCM 2002 do not apply to requests for discharge per this chapter unless the case has been referred to a court-martial authorized to adjudge a punitive discharge.

(2) The discharge request may be submitted after court-martial charges are preferred against the soldier or, where required, after referral, until final action by the court-martial convening authority.

(3) A soldier who is under a suspended sentence of a punitive discharge may likewise submit a request for discharge in lieu of trial by court-martial.

b. The request for discharge in lieu of trial by court-martial does not prevent or suspend disciplinary proceedings. Whether proceedings will be held in abeyance pending final action on a discharge request per this chapter is a matter to be determined by the commander exercising general court-martial jurisdiction over the individual concerned.

c. If disciplinary proceedings are not held in abeyance, the general court-martial convening authority may approve the soldier's request for discharge in lieu of trial by court-martial after the soldier has been tried. In this event, the officer who convened the court in his/her action on the case should not approve any punitive discharge adjudged. The officer should approve only so much of any adjudged sentence to confinement at hard labor or hard labor without confinement as has been served at the time of the action.

10–2. Personal decision

a. Commanders will ensure that a soldier is not coerced into submitting a request for discharge in lieu of trial by court-martial. The soldier will be given a reasonable time (not less than 72 hours) to consult with consulting counsel (see para 3–7*h*) and to consider the wisdom of submitting such a request for discharge.

b. Consulting counsel will advise the soldier concerning—

(1) Elements of the offense(s) charged.

(2) Burden of proof.

(3) Possible defenses.

(4) Possible punishments.

(5) Provisions of this chapter.

(6) Requirements of volunteerism.

(7) Type of discharge normally given under the provisions of this chapter.

(8) Rights regarding the withdrawal of the soldier's request.

(9) Loss of veterans' benefits.

(10) Prejudice in civilian life based upon the characterization of discharge. Consulting counsel may advise the soldier regarding the merits of this separation action and the offense pending against the soldier.